HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT APPEAL No.725 of 2007

Between:

N. Jaya Kumar

… Appellant

AND

The J.W.O., WO ICP & WW (Wel)
For Air Force Officer, Commanding,
Air Force Record Office,
Subroto Park, New Delhi and two others.

… Respondents

; JUDGMENT :

Counsel for the appellant : Smt. A. Prasanna Lakshmi

Counsel for respondent No.1: Sri A. Rajashekar Reddy,
Asst. Solicitor General.

Counsel for respondent No.2: Asst. Government Pleader
for Home

Dated: 18th September, 2007

Per C.V.NAGARJUNA REDDY, J.

This appeal is filed against order dated 24.07.2007 passed by the learned Single Judge in Writ Petition No.13397 of 2007 whereby he declined to accept the prayer of the appellant to direct the respondents to consider his son's application for admission in to Engineering course under Children of Armed Personnel (CAP) quota.

The appellant is an Ex-serviceman having retired from service of the Indian Air Force in the year 1988. Immediately, after his retirement, he joined the department of Atomic Energy and started working in its Heavy Water Plant situated in Manuguru. The appellant's son by name Kannan Jaya Kumar, who was born and brought up in Andhra Pradesh, passed his tenth class examination (CBSE) from the Atomic Energy Central School, Aswapuram, Khammam District. Later on, he completed his two year intermediate course from the State Board of Secondary Education, Andhra Pradesh, appeared for EAMCET-2007 and secured a rank of 49781.

The appellant approached Zilla Sainik Welfare Officer of Khammam District for issue of a CAP certificate. The latter directed the appellant to approach respondent No.2. Since the appellant failed to get the desired certificate for his son, he filed Writ Petition No.13397 of 2007 seeking a writ of Mandamus to direct the respondents to receive and entertain his representation dated 15.06.2007 and issue CAP certificate for his son Kannan Jaya Kumar for being considered for admission into Engineering course under CAP quota. The learned Single Judge dismissed the writ petition by observing that the writ

petitioner cannot be treated as a domicile of Andhra Pradesh so as to entitle his son to get admission in the Engineering course against the seat earmarked for CAP category.

Learned counsel for the appellant submitted that memo dated 19.01.2007 issued by the Government of Andhra Pradesh, Department of Sainik Welfare is arbitrary and illegal. She pointed out that the word 'native' has been clarified to mean ex-servicemen and servicing members of the Armed Forces i.e., Indian Army, Indian Air Force and Indian Navy, who have represented the State of Andhra Pradesh at the time of joining the Armed forces by declaring a place in Andhra Pradesh as their permanent home address and submitted that since the appellant has been residing in the State of Andhra Pradesh for nearly twenty years and his son having been born and studied all through in this State he is entitled to be considered as the native of the State of Andhra Pradesh. Learned counsel then submitted that in March 2007, the appellant got his address changed showing Aswapuram, Andhra Pradesh as the place of permanent residence in the records and, therefore, his son is entitled to be considered under CAP quota of Andhra Pradesh.

Sri A. Rajashekar Reddy submitted that as per the instructions issued by the Government of India from time to time, only domiciliaries of the particular State are entitled to the benefit of allotment of seats under CAP quota of that State. He further submitted that on the admitted facts of the case, the appellant was the native of the State of Kerala and merely because his son has been born in the State of Andhra Pradesh and studied in that State, he cannot be treated as the domiciliary of Andhra Pradesh.

Learned Assistant Government Pleader for Home relied upon the judgment of this Court in Writ Appeal Nos.951 and 952 of 2006 - **Purnendu Kumar Sharma v. Government of A.P. and others** and submitted that the question whether a person, who is not the domiciliary of the State of Andhra Pradesh is entitled to be considered under CAP quota is no longer res integra and that in view of that judgment, the appellant is not entitled to any relief.

We have thoughtfully considered the respective submissions and scrutinized the record.

It is not in dispute that the appellant is a native of the State of Kerala and on account of his employment he has been residing in the State of Andhra Pradesh. It is to be noted that even though he has been residing in the State of Andhra Pradesh for the last two decades, till recently i.e., March 2007 he did not change his permanent address in the relevant records. In **Purnendu Kumar Sharma** (supra), this Court had an occasion to consider the issue whether by mere residence in a particular State the personnel of Armed Forces (serving and past) can claim benefits under the CAP quotas in the filed of education in that State. After considering the instructions issued by the Government of India, the Division Bench held:

> "On the material filed by the third respondent, proceedings No.4008/DGR/S&R/RES-9, dated 22.01.1992 of the Directorate General, Resettlement, Ministry of Defence, Government of India, New Delhi, is most relevant. The said proceedings were issued to the Zilla Sainik Boards who approached the Directorate seeking clarifications on the procedure for issue of fresh identify cards to ex-servicemen consequent upon change in their state of domicile. Para-1 (b) of the said proceedings which is relevant in this context is

extracted below:

> "1(b) The basic purpose of issue of identity card has been to confer the status of ex-serviceman to the holder of the card and to facilitate his identity which entitles him to various benefits and concessions. The issue of identity card by a particular ZSB does not mean that the card holder belongs to that State/ZSB for purpose of availing any benefit/concessions. For availing of various benefits/concessions offered by a State, ex-servicemen has to be the domicile of that State. With a view only to avoid inconvenience to all those ex-servicemen, who may have been away from the RSB/ZSB of that State or domicile on account of re-employment etc; the ex-servicemen were permitted to have their identity cards issued by RSB/ZSB in whose jurisdiction they may be residing at the time of issue of identity card."(emphasis supplied)

The aforementioned circular reveals, beyond any pale of doubt that Ex-servicemen can avail the benefits/concessions offered by a State only if he is the domicillary of that State. No doubt the guidelines issued in the prospectus of the second respondent – University refer only to the requirement of the residence of Ex-servicemen for a minimum period of five years in the State concerned. Para 7.4.1(a) of the prospectus of the 2nd respondent – University provides that application of the candidates under CAP quota shall be scrutinized by the Andhra Pradesh Sainik Board or its nominee and their decision is final and binding on the candidates. In our opinion para 7.4 cannot be read in isolation ignoring the relevant instructions/proceedings issued by the concerned authority, i.e., the Directorate General of Resettlement, Ministry of Defence, Government of India. The conditions contained in the prospectus, are required to be read in conjunction with the instructions issued by the Directorate General of Re-settlement, Ministry of Defence, Government of India. Otherwise, the very object of providing

> the benefits/concessions to Ex-servicemen in the States in which they are the permanent residents would be likely to be defeated. If benefits are given to Ex-servicemen merely on the strength of their residence, there is a possibility of temporary residents, who reside in the States other than their native States only on account of their employment, cornering benefits to the detriment of the Ex-servicemen who are domicillaries of those States. It is stated in the counter affidavit filed on behalf of the third respondent in W.P.No.16305 of 2006 that during the 26th meeting of Kendriya Sainik Board, Ministry of Defence, New Delhi held on 28.06.2006 attended by all the representatives of State Rajya Sainik Boards, a proposal was mooted to remove the domicile restrictions of the defence personnel for the purpose of giving benefits from the States otherthan their own States and no final consensus on the same could be arrived at. We are in entire agreement with the finding of the learned Single Judge that mere residence, *dehors* the proof of domicile, does not entitle the children of Ex-servicemen to the benefits under CAP category."

In view of the above noted judgment, this appeal is liable to be dismissed because by merely residing in the State of Andhra Pradesh, the appellant cannot be said to have acquired the domiciliary status necessary for getting benefit of the quota under CAP. The clarification given in memo dated 19.01.2007 is in conformity with the ratio laid down by this Court in **Purnendu Kumar Sharma** (supra).

For the aforementioned reasons, the writ appeal fails and is accordingly dismissed.

As a sequel to dismissal of the writ appeal, WAMP.Nos.1454 and 1525 of 2007 and WAMP(SR).No.103878 of 2007 filed by the appellant are dismissed as infructuous.

C.V. NAGARJUNA REDDY, J

G.S.SINGHVI, CJ

Date: 18-09-2007.
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